IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 1964 of 2005

Between:

M/s. Nama Constructions, 74-24-11/2,
Plot No. 6, Siva Sai Towers, Dhanukulawari Street,
Ashoknagar Vijayawada, Krishna District
rep by Proprietor, Nama Ramesh, S/o Bhadraiah R/o Plot No. 6
Siva Sai Towers, Ashoknagar, Vijayawada, Krishna District

..... PETITIONER

AND

1 The Deputy Commissioner, (Commercial Tax) No. II Division,
Vijayawada, Krishna District
2 The Commercial Tax Officer, Circle-II, Benz Circle, Vijayawada,
Krishna District
3 The Assistant Commercial Tax Officer, Circle-II, Benz Circle,
Vijayawada, Krishna District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue such appropriate Writ, order or direction to the respondent more so particularly one in the nature of mandamus declaring the action of the respondent NO.3 in refusing to consider the application of the petitioner for issuance of form C vide endorsement dt 22-12-2004 and the action of the 2nd respondent in rejecting the application of the petitioner for issuance of Form C vide endorsement dated 3-2-2005 in RCNo. JA4/273/2004 as arbitrary, illegal and without authority as such are violative of Article 14 of the constitution of India.

Counsel for the Petitioner: MR.HARI SREEDHAR

Counsel for the Respondents: SPL GP FOR TAXES

The Court made the following ORDER:

ORDER:

(Per Sri T.CH. Surya Rao,J)

The petitioner seeks a Writ of Mandamus declaring the action of the third respondent in having refused to consider his application for issuance of Form 'C' as arbitrary, illegal and without authority.

The petitioner is a registered Works Contractor. For the purpose of carrying the work, he seeks to purchase the L&T excavator 200 from L&T, Komatsu Limited, Bangalore. So as to claim the exemption of the Central Sales Tax payable thereon, he applied for Form 'C' with the third respondent. The third respondent under the re-endorsement dated 22.12.2004 in R.C.No.JA4/273/2004 refused to grant C-Form mentioning, *inter alia,* the reasons in support of his decision. As afore said, the petitioner seeks to assail the said order on the premise that he is a dealer and he wants to purchase the excavator for the purpose of carrying on the business of works contract.

It is obvious from the certificate of registration in Form-B granted in favour of the petitioner that the petitioner is a registered works contractor. Confessedly he got himself registered as dealer to undertake the works contracts under the name and style of M/s.Nama Constructions. On his own showing, for the purposes of the works to be undertaken by him, he proposed to purchase an Excavator from M/s. L&T Komatsu Limited, Bangalore. It is, therefore, obvious that the very purpose of purchasing the Excavator is not for sale. In that view of the matter, he, in our considered view, will not answer the definition of "dealer" as enjoined under Section 2(b) of the Central Sales Tax Act, 1956 (for short 'the Act') vis-à-vis the Excavator proposed to be purchased by him. Section 2(c) of the Act deals with the liability to pay tax on inter-State sales. Under Section 8 of the Act, every dealer shall be liable to pay tax at the rates specified *inter alia* therein. He is not exempt from paying the tax unless the sale or purchase of the goods is exempt only under specified circumstances or under specified conditions. Clause (b) of sub-section (3) thereof clearly shows that if the goods are of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods intended for re-sale by him or for use of the same in the manufacture or processing of goods for sale, for that

purpose, Form-C shall have to be obtained in accordance with sub-section (4) thereof.

When obviously Form-C cannot be issued by the dealer from whom the petitioner is proposing to purchase the Excavator, he cannot compel the authorities as a matter of right for issuing necessary 'C' Form.

The order now being impugned is a considered order supported by cogent reasons. It warrants, therefore, no interference.

It may be observed that it is still open to the petitioner to get himself registered with the authorities for the purpose for which he seeks to acquire the machine and in the event of such registration, he can seek issuance of Form 'C'.

For the above reasons, the present writ petition cannot be maintained by the petitioner.

The writ petition is therefore dismissed for the above reasons. No costs.

_____

M.H.S. ANSARI, J

_____

T.CH.SURYA RAO, J

Date: 09.02.2005

va

To

1 The Deputy Commissioner, (Commercial Tax) No. II Division, Vijayawada, Krishna District
2 The Commercial Tax Officer, Circle-II, Benz Circle, Vijayawada, Krishna District
3 The Assistant Commercial Tax Officer, Circle-II, Benz Circle, Vijayawada, Krishna District

4 Two CCs to G.P for Special Taxes, High Court of A.P. Buildings, Hyderabad (OUT)

5 Two CD Copies